

Exhibit 38

In the Matter Of:

UNITED STATES OF AMERICA vs

UNITED STATES SUGAR CORPORATION

ALAN HENDERSON

March 04, 2022



Confidential

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1

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF DELAWARE
3 UNITED STATES OF AMERICA,)
4 Plaintiff,)
5 vs.) CASE NO. 1:21-cv-01644-UNA
6 UNITED STATES SUGAR)
7 CORPORATION, UNITED SUGARS) CORPORATION, IMPERIAL)
8 SUGAR COMPANY, and LOUIS)
9 DREYFUS COMPANY LLC,)
10 Defendants.)

11 ORAL VIDEOTAPED DEPOSITION

12 ALAN HENDERSON

13 MARCH 4, 2022

14 "CONFIDENTIAL"

15 ORAL VIDEOTAPED DEPOSITION OF ALAN HENDERSON, via
16 Zoom, produced as a witness at the instance of the
17 Plaintiff and duly sworn, was taken in the above-styled
18 and numbered cause on the 4th day of March, 2022, from
19 10:37 a.m. to 3:45 p.m. EST, before Melinda Barre,
20 Certified Shorthand Reporter in and for the State of
21 Texas, reported by computerized stenotype machine, all
22 parties appearing remotely via web videoconference,
23 pursuant to the rules of procedure and the provisions
24 stated on the record or attached hereto.
25

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14

1 A. Yes.

2 Q. As vice-president of industrial sales, what are
3 your responsibilities?

4 A. I manage ten account managers throughout the
5 country. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

13 Q. And how many refineries does ASR have?

14 A. We have Yonkers, Baltimore; Chalmette, which is
15 New Orleans; and Crockett outside of San Francisco. And
16 then there's a refinery in Florida, Florida Crystals.

17 Q. Okay. In your position as vice-president, do
18 you have any responsibility with respect to refined
19 sugar prices?

20 A. Yes.

21 Q. Please explain your responsibilities.

22 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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1	[REDACTED]	15
	[REDACTED]	
	[REDACTED]	
4	[REDACTED]	
	[REDACTED]	
	[REDACTED]	
	[REDACTED]	
	[REDACTED]	
	[REDACTED]	
	[REDACTED]	
11	[REDACTED]	
	[REDACTED]	
	[REDACTED]	
	[REDACTED]	
	[REDACTED]	
	[REDACTED]	
	[REDACTED]	
	[REDACTED]	
	[REDACTED]	
	[REDACTED]	
	[REDACTED]	
	[REDACTED]	
22	Q. And do you have responsibility for approving	
23	certain refined sugar prices?	
24	A. Yes.	
25	[REDACTED]	

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A.

18 Q. (By Mr. Geiger) And are you familiar with the
19 term "spot price"?

20 A. Yes.

21 Q. What is a spot price?

22 A. A spot price is equal to what our price
23 guidance is really.

24 Q. And can you explain more -- according to spot
25 price, what does that mean for a customer?

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21 Q. Mr. Henderson, at your work, do you refer to
22 prices that you work on as ASR prices sometimes?

23 A. We always go into really Domino Foods. That's
24 really how the customers know us. That's how we refer
25 to ourselves. Some people say "ASR."

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1 Q. Do those decisions include ones on prices for
2 refined sugar?

3 A. On occasion, yes; on occasions, no.

4 Q. How long have you been in your current
5 position, Mr. Henderson?

6 A. Just over five years.

7 Q. And before that were you at Domino Foods?

8 A. Yes.

9 Q. What was your position before vice-president of
10 industrial sales?

11 A. I was a national account manager.

12 Q. For how long?

13 A. Oh, I would say that was about ten years.

14 Q. Can you explain the process by which Domino
15 decides what price to charge for refined sugar?

16 MR. YATES: Objection, form.

17 A. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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1 [REDACTED] 23

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

9 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Q. Have you heard the term "coverage" or
13 "covered" --

14 A. Yes.

15 Q. -- with respect to refined sugar?

16 A. Right.

17 Q. And can you -- I'm sorry for interrupting.

18 Can you explain what you mean by
19 "coverage" or "covered"?

20 A. "Covered" or "coverage" is people that
21 contract, right? So it's just a -- it's positions that
22 are taken against the 16 trading position.

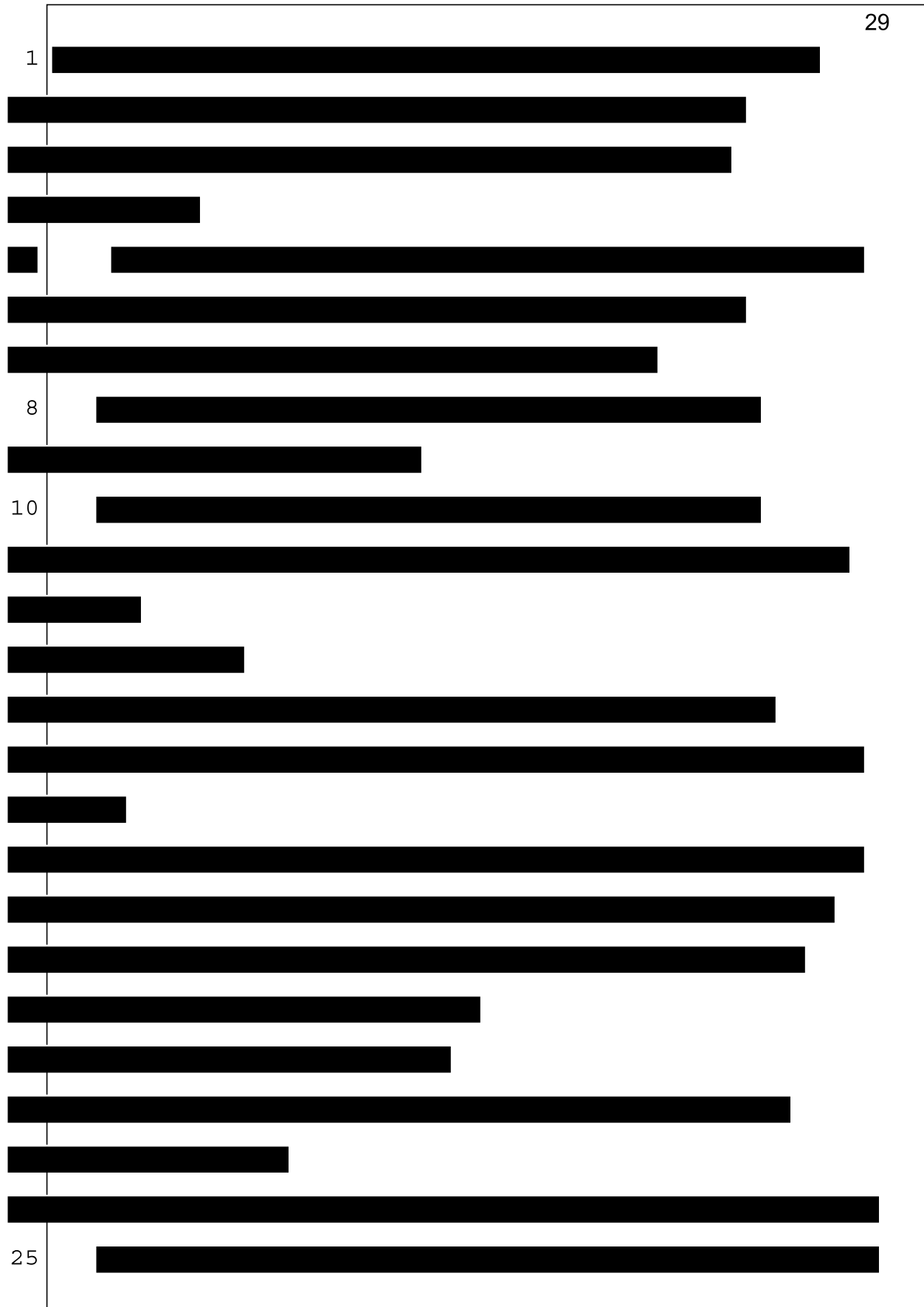
23 Q. Have you ever heard that term referred to with
24 inventory that Domino Foods has sold of its refined
25 sugar?

25

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1 A. Thank you.

2 Q. Are you looking at Exhibit 1?

3 A. Yes. I just opened it up.

4 Q. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

16 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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1 [REDACTED] 34

[REDACTED]

[REDACTED]

4 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

18 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

10

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

14

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1

████████████████████

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A horizontal bar chart consisting of 20 solid black bars. The bars are arranged vertically, with their lengths varying. The longest bars are located in the middle of the chart, while the shortest bars are at the top and bottom. The bars represent a distribution of data, with the longest bars reaching approximately 90% of the width and the shortest bars reaching approximately 20% of the width.

A horizontal bar chart consisting of 20 rows. Each row contains a single black bar. The bars vary in length, representing a distribution of data. The longest bars are in the 2nd, 10th, 11th, 12th, 13th, 14th, 15th, and 16th rows. The shortest bars are in the 3rd, 9th, 17th, 18th, 19th, and 20th rows. The bars are arranged in a single column, with each bar's length corresponding to a value on an implicit scale.

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

14 Q. You can set that document aside, Mr. Henderson.

15 Do you know a Richard Wistisen?

16 A. Yes.

17 Q. Who is he?

18 A. He's, I believe, an economist or commodity
19 specialist.

20 Q. How do you know him?

21 A. He writes a monthly report, puts it out to the
22 trade.

23 Q. When did you first come to know Mr. Wistisen?

24 A. When I assumed the role of vice-president, he
25 sent me e-mail about his market report.

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1 A. Yeah. But, you know, I don't give that much
2 credence because to me that 60 percent doesn't mean a
3 lot because it's all based on size of the crop. Some
4 years you have a 4.5 beet crop; some years you have a
5 5.3 beet crop. So it changes daily based on crop sizes.
6 Like I said, it's a very fluid market.

7 Q. Does the size of your crop change daily
8 throughout the year?

9 A. I believe they send out weekly crop updating
10 reports during the growing season, and weather changes
11 all the time.

12 [REDACTED]

[REDACTED]

[REDACTED]

15 [REDACTED]

[REDACTED]

[REDACTED] Q. [REDACTED]

[REDACTED]

19 Q. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

24 [REDACTED]

[REDACTED]

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10 Q. Why did you share this information with
11 Mr. Wistisen?

12 A. Because I was always under the understanding
13 that he puts together general pricing for his report
14 that goes out to the trade.

15 Q. Is there any benefit to Domino Foods from
16 having that information being in Mr. Wistisen's report?

17 MR. YATES: Object to form.

18 A. I don't call it a benefit. I call it accurate
19 reporting.

20 Q. (By Mr. Geiger) So there's no benefit to
21 Domino Foods from you sharing this information?

22 MR. PETKOSKI: Objection, form.

23 MR. YATES: Join.

24 A. Not that I know of.

25 Q. (By Mr. Geiger) Why do you share it if it's no

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1 A. I have no idea what my competitors do.

2 Q. If you turn to the -- I think it's the fourth
3 page ending in 240.

4 A. Okay.

5 Q. You wrote an e-mail on June 21st, 2021 at
6 9:29 a.m., is that right, to Mr. Wistisen?

7 A. That's correct.

8



25



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5

Q. If you turn back to the fourth page ending 240.

6

A. 240, yes.

7

Q. Mr. Wistisen wrote you an e-mail on July 12th,

8

2021 at 2:25 p.m. Do you see that?

9

A. I do.

10

Q. And he wrote in part, "Michigan and Western

11

80-plus percent, and rumors suggest United is also now

12

around 80 percent booked and recently increased prices

13

(I hope to have confirmation soon)."

14

Do you see that?

15

A. I do.

16

Q. What do you understand "Michigan and Western

17

80-plus percent" to mean?

18

A. I really didn't decipher it or think what he

19

was saying with Michigan and Western at plus 80.

20

Q. You have no understanding as to what that

21

means?

22

A. I wouldn't say I don't have an understanding.

23

It could be one of many things, right? It could be, you

24

know, 80 percent, you know, certain areas or, you know,

25

what their targets are. But I always take it as that

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1 2:18 p.m.?

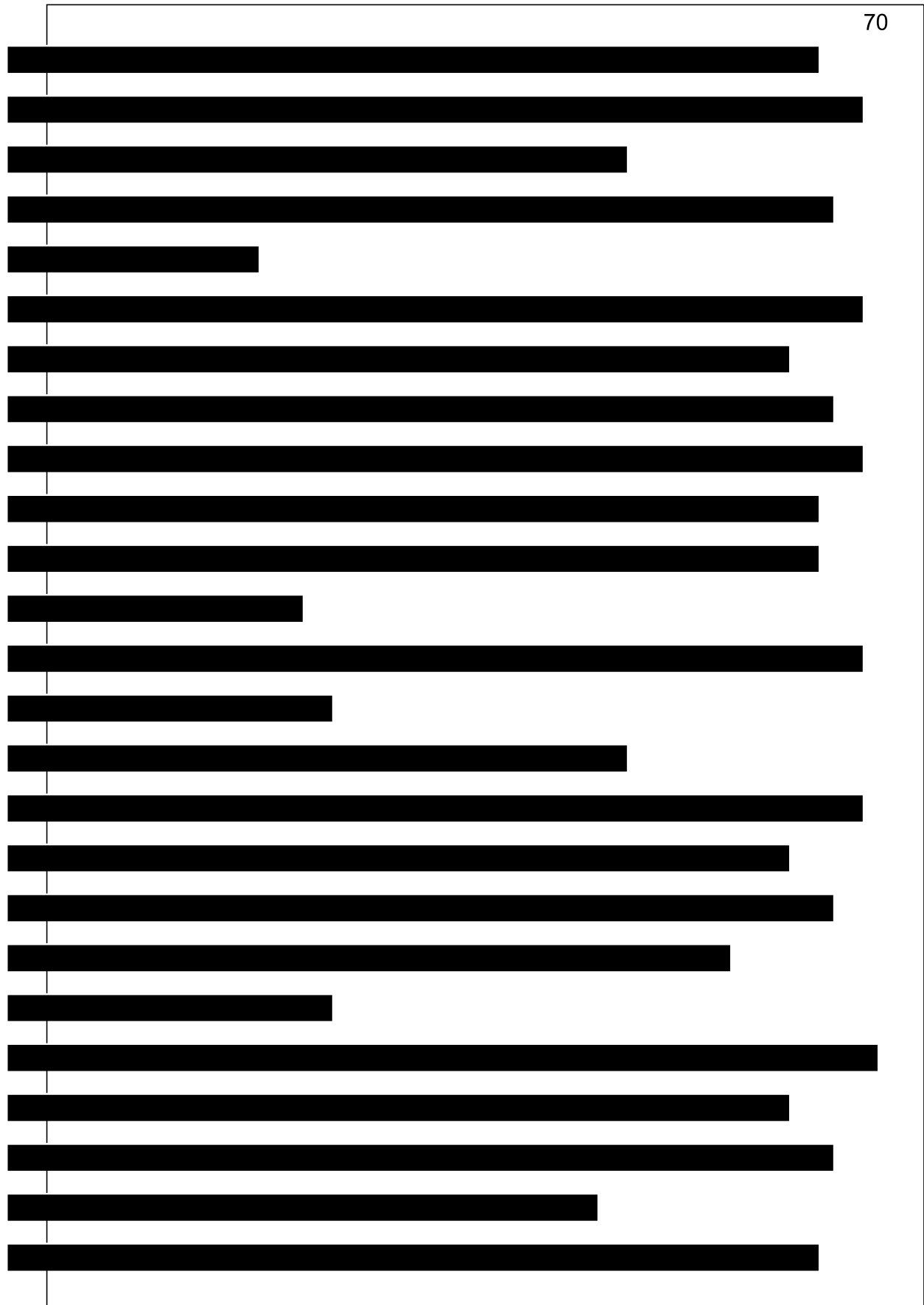
2 A. Yes, sir.

3



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13 Q. (By Mr. Geiger) Turn to the first page ending
14 in 237.

15 A. 237, yes, sir.

16 Q. At the bottom of the page is an e-mail from
17 Mr. Wistisen to you on July 16th, 2021. Do you see
18 that?

19 A. Yes, I do.

20 Q. The subject is "United"?

21 A. Yes.

22 Q. Turning to the next page, Mr. Wistisen writes,
23 "I don't understand it, but this is the word from
24 United: 80 to 85 percent sold, will be over 90 very
25 soon. Beet holding at \$36.50 firm, and cane increased

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1 A. Yeah. I take everything that Rich provides in
2 the report as just general information, you know. It's
3 just one of many things. I never question it too much.

4 Q. (By Mr. Geiger) You wrote an e-mail at the
5 top. Do you see that?

6 A. One second. Yes.

7 Q. You wrote, "Cargill also makes no sense. They
8 sell basis crop and refinery capacity model versus
9 pricing off No. 16 market."

10 Do you see that?

11 A. I do.

12 Q. What did you mean by "basis crop and refinery
13 capacity model"?

14 A. Well, Cargill is, I would say, vertically
15 integrated with the LSR company. So they take their
16 crop and they sell it. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

23 [REDACTED]

[REDACTED]

[REDACTED]

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1

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

6 Q. You received the information in this e-mail
7 before you received his report. Is that correct?

8 A. You know, it depends. Most times yes; but if
9 I'm traveling or something, you know, sometimes I'll
10 open it up after the report comes out. But in most
11 cases, if I remember, I probably get it right before his
12 report.

13 Q. And did you do anything with the information in
14 this e-mail chain before you received the related
15 report?

16 A. Not that I recall. You know, a couple times
17 I'll get e-mails from Mr. Wistisen and just forward them
18 on to my boss, Rob Sproull, to set his general market
19 information.

20 Q. Has Mr. Sproull asked you to forward on the
21 information from Mr. Wistisen?

22 A. Well, Mr. Sproull asks what's going on in the
23 marketplace once in a while and, you know, they --
24 they're aware that, you know, we talk to Mr. Wistisen.
25 Everyone who puts out a report we talk to so we can

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1 provide them our general numbers, and then they put it
2 into a report.

3

[REDACTED]

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[REDACTED]

11

[REDACTED]

14

[REDACTED]

15

[REDACTED]

18

[REDACTED]

22

[REDACTED]

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22 Q. (By Mr. Geiger) Do you consider anything that
23 you wrote in this e-mail to Mr. Wistisen to be
24 unethical?

25

MR. PETKOSKI: Objection to form.

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1 A. Got it.

2 Q. Is this an e-mail chain you sent or received
3 between June 11, 2021 and July 12, 2021 in the ordinary
4 course of your work at ASR?

5 A. Yes. It looks like it is, yes.

6 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

20 Q. You can set that document aside, Mr. Henderson.

21 A. Okay.

22 MR. GEIGER: William, if you will upload
23 document E.

24 Q. (By Mr. Geiger) Mr. Henderson, we are
25 uploading a document starting with the Bates

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1 A. I think they are noted in some market reports,
2 Milling & Baking, the Sosland reports will sometimes
3 note that, that, you know, they're hearing from, you
4 know, the processors that, you know, they may raise
5 prices. So Ron Sterk with Milling & Baking will note
6 that. I can't recall if Rich Wistisen puts it in his
7 reports.

8 Q. Can you recall any instance in the Ron Sterk
9 report or otherwise where they reference a possible
10 price increase for a specific company?

11 MR. YATES: Objection to form.

12 A. Not offhand. You know, he would reference a
13 large Red River Valley processor, and everybody in the
14 industry would assume that's United Sugars.

15 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

24 MR. GEIGER: William, please upload
25 document F in the Chat.

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1 A. Yes, it is.

2 Q. On the first page is an e-mail from you to
3 Mr. Wistisen on August 18th at 1:17 p.m. Do you see
4 that?

5 A. I do.

6 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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10 document, Mr. Henderson.

11 A. Okay.

12 MR. GEIGER: William, if you can upload
13 document M.

14 Q. (By Mr. Geiger) Mr. Henderson, we're uploading
15 a document starting with Bates No. FCC-00081048 and
16 ending with 049. The court reporter will mark this as
17 Henderson Exhibit 10.

18 (Exhibit 10 marked)

19 Q. (By Mr. Geiger) Please let me know when you've
20 opened and reviewed this document.

21 A. This is document M?

22 Q. Correct.

23 MR. YATES: I'm not seeing it yet.

24 A. Yes. Thank you. There it is.

25 Okay. Opened.

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1 Q. (By Mr. Geiger) Mr. Henderson, is this an
2 e-mail chain you sent or received on or about June 18th,
3 2020 in the ordinary course of your work at Domino
4 Foods?

5 A. Yes.

6 Q. The second e-mail in this chain is an e-mail
7 from you to Mr. Whittaker. Do you see that?

8 A. I do.

9



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Q. (By Mr. Geiger) You can set that document
23 aside, Mr. Henderson.

24 MR. GEIGER: William, if you can upload
25 document N.

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1 were using spot prices, was that for bulk refined sugar?

2 A. That is for bulk refined sugar.

3

6

MR. GEIGER: Objection, form.

7 Q. (By Mr. Yates) Have you heard of something --
8 strike that.

9

15 Q. Have you heard of something called tier 2
16 prices, sir?

17 A. Yes.

18 Q. What are they?

19 A. Tier 2 is -- it's a duty paid by an importer of
20 sugar, and it's a set duty by the USDA.

21

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1

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

13 Q. And what sorts of companies are importing
14 tier 2 refined sugar into the United States?

15 A. We mainly see tier 2 refined sugar coming in by
16 distributors and what we refer to as, like, third-party
17 melt houses.

18 Q. So to use distributors as an example, a
19 distributor would import tier 2 refined sugar from
20 overseas, and then what is your understanding of what
21 happens next?

22 MR. GEIGER: Objection, foundation.

23 A. It could be from various sources of
24 Central/South America, overseas, as you put it. It
25 comes into port. It could be port of Florida,

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A horizontal bar chart consisting of 20 rows. Each row contains a single black bar of varying length. The bars are arranged in a single column, with each bar's length corresponding to a value on an implicit scale. The lengths of the bars vary significantly, with some being very short and others nearly spanning the entire width of the chart area. The bars are arranged in a single column, with each bar's length corresponding to a value on an implicit scale.

24

MR. YATES: David, let's have a look at

```
25 tab 26, which we'll have marked as next in order.
```